Filed 3/4/09 In re M.N. CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| In re M.N. et al., Persons Coming Under the Juvenile Court Law. | |
| SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>M.N. et al.,<br><br>Objectors and Appellants. | D053517<br><br>(Super. Ct. No. SJ11794A-C) |

APPEAL from orders of the Superior Court of San Diego County, George W. Clarke, Judge. Dismissed.

M.N., A.L. and M.L. (together, the minors) appeal orders at a combined six- and 12-month hearing continuing reunification services for their parents, L.L., E.L. and L.S., to the 18-month date. We dismiss the appeal as moot.

## FACTUAL AND PROCEDURAL BACKGROUND

On April 11, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of three-month-old M.L. under Welfare and Institutions Code section 300, subdivision (e),[1] and her siblings, four-year-old M.N. and one-year-old A.L. under section 300, subdivision (j), alleging they were at risk because M.L.'s parents, L.L. and E.L., had caused M.L. to suffer severe physical abuse. On April 8 L.L. and E.L. had taken M.L. to an emergency room with a spiral fracture of her femur, three rib fractures and a fractured clavicle, all at different stages of healing. The injuries were classified as nonaccidental trauma connected with child abuse.

L.L. and E.L. said M.L. had been a fussy baby since birth and had had medical problems. They suggested she might suffer from brittle bone disease, but experts opined she did not have the disease. The court ordered the minors detained.

The court found E.L. to be the presumed father of M.L. and A.L. It found L.S. to be the biological father of M.N. L.S., who lived in Nevada, completed a parenting class and begun having unsupervised visits with M.N. Nevada authorities provisionally approved M.N.'s placement with him, but then withdrew the approval. The paternal grandmother said L.S. had been arrested and was charged with fraud and being in possession of stolen credit cards.

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1 Statutory references are to the Welfare and Institutions Code.

The psychologists who evaluated L.L. diagnosed her with depressive and other disorders and recommended parenting classes, therapy, anger management and a psychiatric consultation.

The psychologist who conducted an evaluation of E.L. reported E.L. had been physically abused as a child. The psychologist said E.L. saw M.L. as being demanding and did not understand about an infant's emotional development.

Subsequently, the case was continued several times, resulting in the six-month review hearing being combined with the 12-month review hearing. At the hearing, the social worker opined the children could not be returned safely to the parents by the 18-month date. She testified E.L. had not completed an anger management program, and L.L. was not yet able to accept responsibility for her own actions and did not report the possibility that E.L. might have caused M.L.'s injuries until late in the case.[2] The social worker did not recommend placing M.N. with L.S. because of his criminal charges and because Nevada authorities would not approve placement with him.

L.L.'s therapist said L.L. showed insight and understanding of protective issues and offered ideas on how to better protect her children in the future. The therapist testified L.L. had been proactive in therapy and worked hard to accomplish her therapy goals.

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[2] In June 2008 L.L. told the social worker she thought E.L. might be responsible for M.L.'s injuries because he became frustrated when caring for M.L. and would force her legs into clothing even when M.L. was upset and crying.

At the hearing, E.L. invoked the Fifth Amendment when asked about M.L.'s injuries. He said he had completed an anger management program, but did not provide verification.

L.L. testified she had not injured M.L., but believed E.L. might have done so.

After considering the documentary evidence, testimony and argument, the court found reasonable services had been provided, but returning the minors to their parents would cause a substantial risk of detriment. The court found there was a substantial probability of return by the 18-month date and continued services.

DISCUSSION

The minors contend the court erred by extending services to the 18-month date. They argue there was not substantial evidence that any of the parents satisfied the criteria of section 366.21, subdivision (g)(1), which governs continuing services at a 12-month review hearing. They also assert the court erred by continuing services for all three parents based on L.L.'s performance in services.

On January 28, 2009, on its own motion, this court took judicial notice of the juvenile court's orders at the 18-month hearing in this case on December 18, 2008, in which the court found returning the children to the parents would cause a substantial risk of detriment and reasonable services had been provided, and terminated reunification services and referred the matter to a section 366.26 hearing.[3] This court invited counsel

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[3] We also grant the Agency's request for judicial notice of the minute orders of the October 8, 2008 hearing, at which the court set the 18-month hearing for December 18, 2008.

to submit letter briefs addressing whether this court should dismiss the appeal as moot. The Agency's counsel and counsel for each parent requested the appeal be dismissed,[4] but counsel for the minors asked that we address the merits of the issues.

An appellate court will not review questions which are moot and only of academic interest, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision. (*Keefer v. Keefer* (1939) 31 Cal.App.2d 335, 337.) " ' " '[T]he duty of this court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " [Citation.] . . .' " (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316, quoting *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*In re Jessica K.*, at pp. 1315-1316.) The question of whether subsequent events in a juvenile dependency case render any given issue moot must be decided on a case-by-case basis. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)

The issue of whether the juvenile court erred by continuing the parents' reunification services to the 18-month date has become moot by the court's orders at the

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4 In a motion filed November 14, 2008, L.S.'s counsel requested the appeal be dismissed as to L.S. because the minors did not name him in the notice of appeal, but in their opening brief argued the court erred by continuing his services. Because we dismiss the appeal as moot we do not discuss the issue L.S. raises.

December 18, 2008 hearing terminating the parents' services. This court is not able to grant any effective relief. We thus dismiss the minors' appeal.

DISPOSITION

The appeal is dismissed.

McCONNELL, P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.